

May 1, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Jefferson Landmark, Inc.

Date of Filing: February 27, 2008

Case No.: TEE-0054

On February 27, 2008, Jefferson Landmark, Inc. (Jefferson) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests temporary relief from its requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers’/Retailers’ Monthly Petroleum Product Sales Report.” As explained below, we have determined that the firm’s request should be denied.

I. Background

The DOE’s EIA is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation’s ability to anticipate and respond to potential energy shortages.²

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B³ and permits reporting firms to rely on reasonable estimates.⁴

¹ 15 U.S.C. § 772(a); 42 U.S.C. § 7135(a)-(m).

² See H.R. REP. NO. 373, 96-373, at 15, 17 (1979).

³ Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as “certainty firms”, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be re-selected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

⁴ Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, inequity or unfair distribution of burdens.”⁵ Since all reporting firms are burdened by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, OHA must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.⁶ Similarly, the fact that a firm has filed reports for a number of years does not constitute a hardship warranting relief.⁷ If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.⁸

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;⁹ the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;¹⁰ extreme or unusual circumstances disrupt a firm’s activities;¹¹ or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.¹²

III. Jefferson Landmark, Inc.’s Application for Exception

Jefferson filed its Application for Exception on February 27, 2008.¹³ After reviewing the Application, we determined that we had insufficient information to evaluate the request, so we contacted Jefferson to gather more information.¹⁴

⁵ 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2).

⁶ *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (Oct. 8, 1987) (Case No. KEE-0143).

⁷ *Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (Mar. 21, 1997) (Case No. VEE-0035).

⁸ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (May 9, 1990) (Case No. LEE-0012).

⁹ *Mico Oil Co.*, 23 DOE ¶ 81,105 (Mar. 4, 1994) (Case No. LEE-0075) (granting exception relief where a firm lost one million dollars over the previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (Oct. 15, 1987) (Case No. KEE-0152) (granting exception relief where a firm filed bankruptcy).

¹⁰ *BarMac, Inc. d/b/a Highway Express and Highway Express 2*, 29 DOE ¶ 81,040 (Dec. 3, 2007) (TEE-0051) (granting one year exception relief where the sole employee responsible for the firm’s filings suffered from a severe medical condition); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (May 31, 1994) (Case No. LEE-0083) (granting three months exception relief when two office employees were simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (Apr. 25, 1986) (Case No. KEE-0016) (granting two months exception relief where the firm’s computer operator broke a wrist).

¹¹ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (July 19, 1994) (Case No. LEE-0127) (granting five months exception relief where a firm’s office flooded); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (Nov. 28, 1979) (Case No. BEE-0293) (granting exception relief where a hurricane heavily damaged a firm’s office); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (Mar. 5, 1986) (Case No. KEE-0014) (granting three months exception relief where disruptions caused by installation of new computer system left the firm’s records inaccessible).

¹² *Ward Oil Co.*, 24 DOE ¶ 81,002 (Mar. 29, 1994) (LEE-0088) (granting ten months exception relief where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

¹³ Letter from Jefferson Landmark, Inc. to OHA, received February 27, 2008 (Application for Exception).

Jefferson, based in Bloomingdale, Ohio, is a small heating oil vendor.¹⁵ The firm is currently participating in its second reporting sample, which began in August 2004.¹⁶ Jefferson requests temporary relief from the EIA reporting requirement on the grounds that completing the monthly reporting form is burdensome.¹⁷

In its Application, Jefferson made several arguments to support its request for exception relief. Jefferson argues that completing the form is “time-consuming.”¹⁸ Jefferson believes that it has spent a disproportionate amount of time completing the form over the years.¹⁹ Jefferson also asserts that while it has spent valuable time completing the form, it has lost its competitive edge.²⁰ According to Jefferson, continuing to file Form EIA-782B will cost the company money and interfere with its daily operations because it is “burdensome to complete the form and fill 100 orders a day.”²¹

Jefferson further believes that the firm is entitled to exception relief because it has reported in three samples.²² Jefferson maintains that completing the form is “not right” for a company its size because it is “very small” and only employs about two dozen people.²³ Jefferson states that it is time for competitors to “pick up the slack” and “share the burden” of completing the form.²⁴

IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. Thus, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

None of the arguments advanced by Jefferson in support of its exception request are availing. Indeed, we have routinely denied exception applications in precisely these circumstances.²⁵

¹⁴ See Memorandum of Telephone Conversation between Joe Rozsa, General Manager, Jefferson Landmark, Inc., and Avery R. Webster, Attorney-Examiner, OHA, dated March 31, 2008 (Rozsa Telephone Memo).

¹⁵ *Id.*

¹⁶ See Memorandum of Telephone Conversation between Tammy G. Heppner, Survey Statistician, EIA, and Avery R. Webster, Attorney-Examiner, OHA, dated March 31, 2008.

¹⁷ See Rozsa Telephone Memo.

¹⁸ *Id.*

¹⁹ See Memorandum of Telephone Conversation between Bob Sensibaugh, Petroleum Manager, Jefferson Landmark, Inc., and Avery R. Webster, Attorney-Examiner, OHA, dated April 2, 2008 (Sensibaugh 2nd Telephone Memo).

²⁰ *Id.*

²¹ See Rozsa Telephone Memo.

²² See Application for Exception. Jefferson asserts that it was selected to participate in the four year reporting sample from 1989 until 1993.

²³ See Memorandum of Telephone Conversation between Bob Sensibaugh, Petroleum Manager, Jefferson Landmark, Inc., and Avery R. Webster, Attorney-Examiner, OHA, dated April 1, 2008 (Sensibaugh 1st Telephone Memo).

²⁴ See Rozsa Telephone Memo; see also Application for Exception.

²⁵ See *The Kiesel Co.*, 29 DOE ¶ 81,019 (Apr. 7, 2006) (Case No. TEE-0033) (denying a firm exception relief where it had only one employee, reporting took between one and two days to complete, and reporting interfered with their business); see also *Wavaho Oil Co., Inc.*, 29 DOE ¶ 81,008 (Aug. 9, 2005) (Case No. TEE-0019) (denying exception relief where reporting took between two and three days, the firm lacked a computer system to compile data, and could not afford extra help to complete the process); *Hampton Gas Co., Inc.*, 26 DOE ¶ 81,015 (May 22, 1997)

Regarding Jefferson's argument that completing the form is time-consuming, we have previously held that the Form EIA-782B reporting requirement is not particularly burdensome.²⁶ It requires little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and one half hours per month to complete the form.²⁷ We note that Jefferson spends one to one and one half hours per month completing the form, which is well below the EIA estimate.²⁸ Furthermore, Jefferson may reduce its reporting burden by employing reasonable estimates.²⁹

In addition, Jefferson's argument that it has filed the form for many years does not warrant relief. We have consistently held that the length of time a firm has been required to file an EIA form does not justify relief.³⁰ In sum, Jefferson has not demonstrated that the reporting requirement poses a burden significantly greater than that experienced by other firms.

Based on the foregoing, we find that Jefferson has not demonstrated that the requirement to file Form EIA-782B is burdensome in a manner that distinguishes it from other similarly affected firms. Accordingly, Jefferson's application for exception should be denied.

It is Therefore Ordered That:

- (1) The Application for Exception filed by Jefferson Landmark, Inc., Case No. TEE-0054, be and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: May 1, 2008

(Case No. VEE-0041) (denying exception relief where the firm had only a two-person staff and did not maintain the reporting information as a monthly record).

²⁶ See American Energy, 30 DOE ¶ 81,002 (Feb. 13, 2008) (Case No. TEE-0053); *Ullman Oil Company*, 30 DOE ¶ 81,001 (Jan. 8, 2008) (TEE-0052); *Mark's Appliance & Heating*, 29 DOE ¶ 81,039 (Sept. 18, 2007) (TEE-0048).

²⁷ Section 10 of the General Instructions to Form EIA-782B.

²⁸ See Sensibaugh 1st Telephone Memo.

²⁹ See Section 7 of the General Instructions to Form EIA-782B.

³⁰ *Emerson Oil Co.*, 29 DOE ¶ 81,033 (Apr. 24, 2007) (TEE-0043).